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SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 209

EMICH MOTORS CORPORATION AND U. S. ACCEPTANCE CORPORATION,

Petitioners,

vs.

GENERAL MOTORS CORPORATION AND GENERAL MOTORS ACCEPTANCE CORPORATION,

Respondents.

ANSWER OF RESPONDENTS TO PETITION FOR CLARIFICATION AND REHEARING.

HENRY M. HOGAN,
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DANIEL BOONE,
Of Counsel.

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The petition for rehearing seeks an advisory opinion with respect to a matter which not only is beyond the limited grant of certiorari but which also was not an issue raised in the original trial.

Petitioners inquire whether the criminal judgment may be used as circumstantial evidence of an illegal motive in the cancellation of plaintiff's franchises. Their argument is that the question is one of statutory construction within the limited issues which this Court undertook to review.

This argument is not supported by the record. Nowhere in the petition for certiorari or in the briefs on the merits herein did petitioners claim that either the trial court or the

Court of Appeals had ruled upon such an issue. The trial court never was requested to admit the criminal judgment as evidence of respondent's motive nor *a fortiori* was the jury ever instructed that the judgment might be considered as circumstantial evidence of that motive. Indeed the proposition that petitioners now advance was not mentioned in either the trial court or the Court of Appeals until long after the latter tribunal had taken the case under advisement on briefs and argument.*

We respectfully submit that the pending petition presents questions which are academic, do not arise on the present record and may never arise. The Petition for Clarification and Rehearing should be denied.

Respectfully submitted,

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Counsel for Respondents.

DANIEL BOONE,
Of Counsel.

March 23, 1951.

* That petitioners also considered that this matter was beyond the scope of this Court's grant of certiorari is evidenced from the fact that no mention of this proposition was contained in the original brief for petitioners on certiorari.